

HCJ & RSRJ

W.P.No.21496 of 2005

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Per G.S. Singhvi, CJ

Sri Anne Venugopala Krishna Murthy has invoked the jurisdiction of this Court under Article 226 of the Constitution of India by claiming himself to be the President of a Society named 'ALAYABOOMULA PARIRAKSHANA SAMITHI'. He has prayed for restraining respondent No.4 Nanduri Mruthumjaya Sarma from constructing a Shivalayam on a portion of land bearing R.S.D.No.128/3, which is alleged to have been gifted by Duggirala Bhaskara Rao in favour of Sri Tirupathi Venkateswara Swamy of Tirupathi vide gift deed dated 5.8.1963 for the purpose of construction of temple. According to the petitioner, the land in question now vests in Tirumala Tirupathi Devasthanams (for short, 'TTD') but respondent No.4 has unlawfully encroached over it and is constructing Shivalayam without the sanction of law. The petitioner has averred that TTD Board has filed first information report in the matter of encroachment of the disputed land by respondent No.4 but the concerned police officer has not taken any action, necessitating filing of this petition.

In the reply filed on behalf of respondent No.4 it has been averred that he is Secretary of Sri Kasi Vishalakshi Annapurna Sahita Vishweshwara Swami Vari Devalaya Nirmana Mariu Nirvahana Committee, Gannavaram. He has questioned the *locus standi* of the petitioner to file writ petition by asserting that he has nothing to do with the land in question. He has averred that the Shivalayam is being constructed as per the wishes of the people of the village who have given donations for that purpose. Still further, he has averred that the land does not belong to TTD. For the sake of convenience and reference, paragraphs 3, 4 and 5 of the affidavit of respondent No.4 are reproduced below:

"In reply to para No.1, the writ petitioner Society is not registered under any statute and does not have any legal personality under the eye of law and as such the petitioner has no *locus standi* to file this writ petition before this Hon'ble Court. The writ petitioner is neither a resident of Gannavaram nor have any interest in the construction of the temple in whatsoever manner. Therefore, the petitioner herein has no right to seek for the demolition of the construction raised by this respondent. It is submitted that one D. Madhusudhana Rao along with two minor brothers, D. Nageshwara Rao and D. Raghavendera Rao represented by their father D. Bhaskar Rao had donated Ac.0.06 cents of land in R.S.D.No.128/3 for construction of a temple for SRI TIRUPATHI VENKATESWARA SWAMY situated in Gannavaram village by registered deed bearing No.1857 of 1963 dated 5.8.1963. In olden days, Lord Venkateswara Swamy used to be called as Tirupathi Venkateswara Swamy in common usage and parlance. After passing of three decades, the villagers and general public wished to construct a temple as per the wishes of the donors. But as already a temple for Lord Venkateshwara Swamy is existing in Gannavaram, the villagers and the general public wished to construct a Sivalayam as there is no temple for the Lord Shiva in Gannavaram village. According to the wishes of the villagers, general public and the donors of the property, a society has been formed under the name and style of Sri Kasi Vishalakshi Annapurna Sahita Vishweshwara Swami vari Devalaya Nirmana Mariu Nirvahana Committee, Gannavaram (M) and is constructing a Sivalayam. Accordingly, the donors have given their willingness and consent to the President of the above society.

In reply to paras 4 and 5, it is submitted that in this connection, I may be permitted to submit that, even if it is presumed to be true for arguments sake without admitting that the document is in the name of TTD, the possession of that particular piece of site was not delivered to the donee and the original of the document is with the donors and as such it can be said that the gift is not acted upon and not accepted under law and procedure. Therefore, the TTD has nothing to do with the above property and they have no right whatsoever against the above property. It is specifically submitted that though the donors relinquished the rights over the particular property for the construction of a temple but the possession was with them till the construction of Sivalayam and the construction is being made with their consent only.

It is true that in pursuant to the complaint made by the TTD, the MRO and the police had illegally interfered and directed this respondent to stop the construction of temple and this respondent stopped the construction. Immediately this respondent and the villagers approached the RDO, Nuzvid, and the Collector Krishna District and requested to conduct proper enquiry in the matter. Accordingly, the RDO after conducting an enquiry and after perusing the relevant documents filed by both the parties and instructed the MRO and the police not to interfere with the construction of the temple."

In his affidavit, respondent No.5 has supported prayer of the petitioner.

We have heard the learned for the parties and carefully scanned the record. In our opinion, the writ petition is liable to be dismissed because, - a) as per the petitioner's own showing, the land in question belongs to TTD and the concerned authority of TTD has lodged FIR in the matter of alleged encroachment made by respondent No.4; and b) the question whether respondent No.4 has encroached on the land of

TTD can be adjudicated only after the parties are given reasonable opportunity of adducing evidence in support of their respective causes and this exercise can appropriately be taken by a Civil Court. In exceptional cases, this Court can, in exercise of power under Article 226 of the Constitution of India, decide contentious issues but the present one is not a case which warrants invoking of such exercise by the Court. We are further of the view that there is no warrant for issuance of a direction for prosecution of respondent No.4. If the authorities of TTD so desire they can avail appropriate legal remedy for removal of the alleged encroachment made by respondent No.4.

With the above observations, the writ petition is dismissed.

G.S. SINGHVI, CJ

12th December, 2005

R. SUBHASH REDDY, J

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